



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 28, 1995

Ms. Tracy R. Briggs  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-471

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32730.

The City of Houston (the "city") has received a request for information pertaining to a disparity study prepared by a legal consultant, D.J. Miller & Associates; correspondence regarding this report and its preparation among city officials and the consultant; and recommendations released by the mayor. You do not assert that the mayor's recommendations are excepted from required public disclosure. Our ruling does not consider these recommendations. We assume you have released them.

You have submitted the following documents for review: an analysis of requirements established in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and recommended methodology to address those requirements provided by D.J. Miller & Associates to the city attorney (exhibit 2); a draft communications plan for release of the disparity study provided by D.J. Miller & Associates to the city attorney (exhibit 3); an interoffice memorandum from the mayor to a city employee (exhibit 4a);<sup>1</sup> and a memorandum from D.J. Miller & Associates to the city concerning methodology for conducting the disparity study (exhibit 4b).

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<sup>1</sup>You claim that exhibit 4a is not responsive to the open records request because it is not correspondence between the city and the consultant and state that you provided it solely because it caused exhibit 4b to be generated. This ruling does not address whether exhibit 4a is excepted from required public disclosure.

You claim that exhibit 2 is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) excepts from disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) excepts information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14 (explaining scope of attorney-client privilege). Furthermore, information that does not contain legal advice or opinion, or reveal client confidences is not protected by section 552.107(1). Open Records Decision No. 574 (1990) at 3, 5.

Information may be withheld under section 552.107(1) only to the extent that it documents client confidences or reveals an attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990). Exhibit 2 reflects information obtained by the city attorney in the course of providing legal advice to the city concerning affirmative action policy development. You may withhold those documents you have identified as exhibit 2 pursuant to section 552.107.

You assert that exhibits 3 and 4b are excepted from disclosure under section 552.111 of the Government Code because they are intra-agency memoranda related to authorized policy-making functions of the city. Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* Section 552.111 is applicable to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Open Records Decision No. 631 (1995) at 2-3.

Exhibits 3 and 4b clearly relate to the policymaking processes of the city with regard to affirmative action issues relating to historically underutilized businesses. *See id.* at 3 (concluding that report created by outside consultant for university regarding university's affirmative action policies constitutes intra-agency memorandum excepted

from disclosure under § 552.111 because it relates to policymaking functions of university). D.J. Miller & Associates appears to have prepared the information at the request of the city. The development of an affirmative action policy is within the authority of the city. Therefore, you may withhold exhibits 3 and 4b pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/LMM/rho

Ref.: ID# 32730

Enclosures: Submitted documents

cc: Mr. John Getter  
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(w/o enclosures)